

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2977 of 1997
with
SPECIAL CIVIL APPLICATION No 3192 of 1997
with
SPECIAL CIVIL APPLICATION No 7696 of 1996
with
SPECIAL CIVIL APPLICATION No 3285 of 1997
and
CIVIL APPLICATION No 4752 of 1998
in
SPECIAL CIVIL APPLICATION No 3285 of 1997
with
SPECIAL CIVIL APPLICATION No 5599 of 1997
with
SPECIAL CIVIL APPLICATION No 7046 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy
of the judgement? No

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4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GUJARAT STATE FERTILISERS EMPLOYEES UNION & ORS

Versus

UNION OF INDIA & ORS

Appearance:

MR KS NANAVATI with MR RD DAVE & MR GANDHI for
Petitioners - Unions

MR SN SHELAT for IPCL
MR THAKAR for GSFC & GACL
MR TUSHAR MEHTA for GEB
MR RJ OZA Standing Counsel for Central Govt.
MR BT RAO for PROVIDENT FUND AUTHORITIES.

CORAM : MR.JUSTICE H.L.GOKHALE
Date of decision: 06/10/98

ORAL JUDGEMENT

Heard the learned advocates appearing for the parties. RULE on all the petitions. Rule is made returnable forthwith. The advocates for the respondents waive service. They have filed replies and they are all heard.

2. Special Civil Applications Nos.2977 of 1997, 3192 of 1997, 7696 of 1996, 3285 of 1997 (and Civil Application No.4752 of 1997 in Special Civil Application No.3285 of 1997) are filed by the trade unions/associations of employees representing the majority of workmen/employees under the concerned employers. Special Civil Application No.2977 of 1997 is concerning the employees of Gujarat State Fertilizers Company Ltd. Special Civil Application No.3192 of 1997 is concerning the employees of Gujarat Alkalies & Chemicals Ltd. and Special Civil Application No.7696 of 1996 is concerning the employees of Gujarat State Fertilizer Co. Ltd. (Polymers Unit). Special Civil Application No.3285 of 1997 is concerning the employees of Indian Petrochemical Corporation Ltd. All these companies are either Government companies or companies where the Government is having principal shareholding.

3. Special Civil Application No..5599 of 1997 is filed by Gujarat Electricity Board whereas Special Civil Application No.7046 of 1997 is filed by GEB Engineers' Association which represents the engineers of Gujarat Electricity Board, which petition supports Special Civil Application No.5599 of 1997. All these petitions essentially seek exemption from the provisions of the Employees' Pension Scheme 1995 framed under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 on the ground that they have a private pension scheme which is better than the one under the Employees' Pension Scheme, 1995. Section 17 (1)(c) of the Employees Provident Fund & Misc.

Provisions Act read with para 39 of the above-referred Scheme provide for exemption from the coverage of the Employees Pension Scheme 1995. That power to exempt is vested in the appropriate Government and the same is to be exercised subject to the condition that the appropriate Government is satisfied that the provisions of such private pension scheme are at par with or more favourable than the scheme under this Act. In all these cases (except the case of Gujarat Electricity Board), the pension scheme covering the employees of these organisations has been in existence and in operation prior to the Employees' Provident Fund Scheme coming into force which came into force on 16.11.1995. In the case of the Gujarat Electricity Board, the Board has framed its scheme subsequent to the Central Scheme coming into force and has also applied to the authorities concerned for exemption. Prior thereto, the Gujarat Electricity Board was following the earlier Employees Pension Scheme of 1971. In all these matters, the applications made in this behalf have been rejected/ returned for deficiency. In the case of Gujarat Electricity Board, an order has also been passed determining the amount due from the employer towards the pension scheme which the Board is supposed to transmit to the authorities of the Government for implementing the scheme.

4. All the petitions challenge the orders of rejection of exemption applications as also the order passed under Section 7-A of the Act in the case of Gujarat Electricity Board directing recovery/refund of the amount involved.

5. Various submissions have been advanced on behalf of the learned Counsel for the petitioners. Mr.K.S.Nanavatii, Senior Advocate with Mr.R.D.Dave and Mr.Gandhi have appeared for the Unions. Mr.S.N.Shelat has appeared for Indian Petrochemicals Corporation Ltd. and Mr.Thakar for Gujarat State Fertilizer Co. Ltd and Gujarat Alkalies & Chemicals Ltd. Mr.Tushar Mehta has appeared for Gujarat Electricity Board. They have assailed the impugned order. Mr.R.J.Oza and Mr.B.T.Rao have appeared for the Central Government and the Provident Fund authorities to support the orders that have been passed.

6. A number of submissions have been canvassed to assail the impugned orders. It has been pointed out that the orders are without jurisdiction; proper hearing has not been given and that the orders have not been passed within the stipulated period as provided under para 39 of the said Scheme. Apart therefrom, it has been stated

that under the Schemes of the companies there are provisions (excluding Gujarat Electricity Board as stated above) for better benefits. It is submitted that the employees concerned are required to contribute much less whereas they are to receive better pension. It is also submitted that the problems of management are also less in a privately operated scheme and that ultimately works to the benefit of the employees who get their pension regularly, easily and quickly.

7. As against the above submissions on behalf of the petitioners, Mr.Rao and Mr.Oza have submitted that a reasoned order has been passed on merits in all these cases and that the competent authority has fully applied its mind to the facts of the case and all the material that was placed before the authority has been taken into consideration. A number of defects have been pointed out in the private schemes, such as, that contract labourers or casual labourers are not provided the benefits in some of the schemes.

8. In the case of Gujarat State Fertilizer Co. Ltd., Gujarat State Fertilizer (Polymers Unit) and Indian Petrochemical Corporation Ltd., one inning has already taken place in this court and this is the second occasion when these petitioners along with others are before this court.

9. After the matter was heard for some time, Mr.Rao has drawn my attention to the order passed by the competent authority which clearly suggests that the applications given by the applicants were not complete and further particulars ought to have been given by them and, if they are given, the authorities concerned were inclined to re-examine the matter afresh. Mr.Rao states that though this opportunity was offered, the concerned managements have not availed thereof. On the other hand, the Unions concerned have chosen to rush to this court instead of complying with the procedure. The learned counsel for the petitioners dispute this statement. In the case of Gujarat Electricity Board, it has already submitted fresh application with a modified scheme. In this view of the matter, it would be proper that the fresh application given by Gujarat Electricity Board may be looked into afresh. The managements of the other companies also were given opportunity to submit fresh applications with all particulars so that all the aforesaid aspects can be gone into by the competent authority itself.

10. It was submitted by the petitioners that this

court ought to look into the matter and stay the orders passed by the competent authority which, in my view, would not be proper and assuming that there is any merit in their submissions, it would lead to a number of complications. Instead of that, if the competent authority has itself offered to re-examine the matter, that would be in the fitness of things. That apart, there is also the problem of examination as to what should be the correct cutt-off date, whether any exception could be made in favour of an entire scheme or any class of employees and, in the event the private scheme is to be rejected, what arrangement should be made for transfer of funds from the companies to the authorities enforcing the pension scheme so that the employees receiving pension do not suffer and also so that there is no break in receiving pension. In the circumstances, in view of the discussion as above, it would be proper that all the orders rejecting the exemption applications ought to be set aside and the order passed under Section 7-A be kept in abeyance. That will also be along with the direction that all the applicants will submit fresh applications to the authorities concerned with full particulars within four weeks from today. Mr.Oza and Mr.Rao inform that, after the applications are scrutinized at the level of the Provident Fund Commissioner and are found in order, they are forwarded to the competent authority in Delhi. It is at the level of the competent authority that final decision is taken. At that stage, a notice will be given to the establishments concerned and they will be permitted to participate in the discussion when the decision is taken. The companies will be permitted to send their authorised representatives, and the trade unions will also be permitted to send their representatives along with the officers of the concerned companies. Mr.Rao opposes participation by representatives of trade unions and says that they should not be permitted to remain present during the discussion. This suggestion made by Mr.Rao is rejected inasmuch as it has now come to be well-settled that where the interests of the employees are concerned, they have got to be heard. This has been so in the field of company law and can certainly be so where the matter relates to pension of the employees. Mr.Rao states that this objection is raised because there are inter-union problems. To avert this situation, it is directed that from each company, there will be only one union representative nominated for the purpose. Mr.Dave states that, as far as Gujarat State Fertilizer Co. Ltd., Gujarat State Fertilizer Co. Ltd. (Polymers Unit) and Gujarat Alkalies & Chemicals Ltd. are concerned, there is only one union in each

company. For each of these three companies, one representative each will be permitted. As far as Gujarat Electricity Board is concerned, the union which has filed the petition, namely, GEB Engineers' Association will be permitted to represent. In Indian Petrochemical Corporation Ltd. there are three unions and one officers' association. If all of them send one representative, they will be permitted to do so provided all the four unions sign on his authorisation. Mr.Oza states that the respondents will see to it that the exercise including the final order will be completed preferably within four months after receipt of the complete applications. It is, therefore, directed that until that is done and for a period of two weeks thereafter, the present arrangement will continue, namely, the private schemes under which the employees are presently being given their pension will continue to operate and the amounts will not be required to be transferred.

11. When the competent authority passes the final order, it is expected to cover both these aspects; firstly, whether the exemption application should be granted or not and, secondly, if it is not to be granted, what should be the modality of transfer of the amounts from the companies to the authorities under the Government scheme of pension and in doing that, the companies are expected to give full details and full cooperation to the authorities concerned. In all those cases where notices under section 7-A are issued but not finalised, it will be open for the authorities concerned to complete the proceeding. However, the final order if passed will not be executed and brought into force for the aforesaid reasons.

12. Mr.Rao points out that, in all 162 employees of Indian Petrochemical Corporation Ltd. are not being given their pension by the IPCL though their union is clamouring for better benefits for the employees. Two of the employees, namely, Swarna Hari and M.P.Trivedi are present in the court and state that they are not being given their pension on the basis of revised pay. Mr.Rao further states that no case has been cleared for the purpose of pension of late. It is stated on behalf of the Trustees of IPCL P.F.Fund that they will see to it that these grievances are satisfied within one month from today. In the event that is not so done, it will be open for the respondents to apply to this court that the interim protection granted be vacated. Rule is made absolute to the aforesaid extent.

(KMG Thilake)

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